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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

JOHNSTON & CHEEK V. GREEN, TRUSTEE.—Decided at Richmond, January 24, 1904.—*Harrison J.* Absent, *Cardwell, J.*

1. **TRUST FUNDS—Disbursements—Deposit with preferred creditor—Interest.** Where a trustee deposits the trust fund, subject to his check, with a banker who is a preferred creditor, and the account is an active and varying one, subject to no special agreement between the parties, and a decree is pronounced directing the trustee to deduct his commission, a reasonable fee to his attorneys, and the unpaid costs of suit, and to distribute the balance to the creditors according to their rights and priorities as ascertained by a commissioner's report which had been confirmed, the debt of such banker is not to be credited by any portion of such deposit until actual payment thereof is made to him, although he is the first preferred creditor, the amount of the deposit large, and actual payment long delayed. He has no control over the fund, and the amount to be paid to him is not ascertained. The trustee alone is chargeable with the disbursement of the fund, and interest continues to run on the creditor's debt until payment is actually made.

CONSUMERS' BREWING COMPANY V. DOYLE'S ADMINISTRATRIX.—Decided at Richmond, February 4, 1904.—*Harrison, J.* Absent, *Cardwell, J.*

1. **NEGLIGENCE—Burden of proof.** In an action to recover for a negligent injury the burden is on the plaintiff to establish the negligence of the defendant by affirmative evidence which shows more than a mere probability of a negligent act. The proof need not be direct and positive by an eye-witness, but it must be such as to satisfy reasonable and well-balanced minds that it resulted from the negligence of the defendant. If the injury may have resulted from either one or the other of two causes for only one of which the defendant is responsible, or if it is just as probable that it was caused by the one as the other, in either event the plaintiff must fail.

2. **NEGLIGENCE—Concurrent negligence of parties.** If the continuing negligence of a plaintiff up to the time of the injury, concurs with the negligence of the defendant in causing the injury, the plaintiff cannot recover.

3. **DAMAGES—Negligence—Accident.** A defendant is not liable for damages resulting from an event which was not expected, and could not have been anticipated by a person of ordinary prudence.

RICHMOND STANDARD STEEL, SPIKE & IRON COMPANY V. CESTERFIELD COAL CO.—Decided at Richmond, February 14, 1904.—*Buchanan, J.* Absent, *Cardwell, J.*

1. **PLEADING—Variance between allegation and proof—Evidence—Parol evidence to vary written contract.** Where an undated written contract is